

PIPELINE PETROLEUM CORP.

IBLA 78-105

Decided February 22, 1978

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dated May 16, 1977,  
declaring oil and gas lease NM 24985 terminated by operation of law for failure to pay the annual rental on time.

Reversed and remanded.

1. Accounts: Payments—Oil and Gas Leases: Rentals—Oil and Gas Leases:  
Termination—Payments: Generally

A check tendered prior to the due date of an oil and gas lease annual rental payment, which is properly dishonored by the drawee bank, does not constitute timely payment. But where return of the check results from a confirmed bank error, subsequent collection and payment of the check relates back to the time of the original tender, and payment is timely.

2. Accounts: Payments—Oil and Gas Leases: Rentals—Payments: Generally

Annual rental payments on oil and gas leases are sent to depositories designated by the Secretary of the Treasury if their location

permits the deposit to be hand carried; otherwise, the deposits are mailed to the Denver Branch of the Kansas City Federal Reserve Bank. Washington, D.C., offices of the Bureau of Land Management may send deposits to the Cash Division of the Treasury Department. All checks drawn on foreign banks or foreign branches of United States banks must be sent for deposit to the Cash Division of the Treasury Department.

An oil and gas lease rental payment check returned to the Bureau of Land Management because a Federal Reserve Bank will not accept for collection checks drawn on foreign banks, but which could be collected through the Cash Division of the Treasury Department and would be honored by the drawee bank, is not "uncollectible."

APPEARANCES: Morton J. Glickman, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE RITVO

Pipeline Petroleum Corp. appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 16, 1977, declaring oil and gas lease NM 24985 terminated by operation of law for failure to pay the advanced annual rental on time. <sup>1/</sup> Under 43 CFR 3108.2-1(a) (1976), implementing 30 U.S.C. § 188(b) (1970), a lease on which there is no well capable of producing oil and gas in paying quantities terminates automatically if

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<sup>1/</sup> The land involved consists of the NW 1/4 NE 1/4, sec. 26, T. 15 S., R. 2 W., New Mexico principal meridian, Sierra County, New Mexico. May 1, 1975. Miller relinquished all but the current leasehold as of April 5, 1975. Miller then assigned the lease to Gregor Klurfeld on September 1, 1976, who in turn assigned it to appellant on November 1, 1976.

the lessee fails to pay the annual rental on or before the anniversary date of the lease. Here, the lease issued May 1, 1975, and payment was due May 1, 1977. BLM based its decision on the fact that the check which appellant remitted to BLM in payment of the rental failed to clear.

Involved is a check drawn by Morton J. Glickman on the National Bank of Nova Scotia, payable to the "Bureau of Land Management," in the amount of \$20 "U.S." A notation on the front of the check indicates that it is "payable in U.S. funds." BLM received Glickman's check on April 19, 1977, and endorsed the check for credit to the Treasurer of the United States. The check was then mailed to the Denver Branch of the Kansas City Federal Reserve Bank (FRB-Denver) for deposit. FRB-Denver, however, instead of depositing the check, returned it to BLM marked "Return Item Apr 26 '77 \* \* \* NOT IN USA." The latter notation refers to the fact that the check had been drawn on a foreign bank.

In a notice of appeal and statement of reasons filed June 2, 1977, appellant asserts that FRB-Denver erred in returning the check, and that its payment was adequate and timely made. 2/ It states:

The check was returned as uncollectable [sic] solely because of an error at the Bureau of Land Management's bank. The check was collectable [sic] at all times since

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2/ Glickman also submitted on June 2 a second check virtually identical to the first, which was similarly returned by FRB-Denver.

it was issued. Notation on the check indicated the Paying Bank was not located in the USA. This is insufficient reason for the check to be returned since payment was being made in US funds from Canadian chartered bank, the Bank of Nova Scotia. The Bureau of Land Management has previously cashed numerous \$US \$ checks payable from Canadian banks.

[1] This case requires us to consider 43 CFR 1822.1-2(a) (1976), which specified the valid forms of remittance to

BLM:

[F]orms of remittances that will be accepted in payment of fees, rentals, purchase price, and other charges required by the regulations in this chapter include cash and currency of the United States and checks, money orders, and bank drafts made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the Government office. [Emphasis added.]

We have applied the underlined language in a number of cases, in which a lessee's check in payment of the advance annual rental was returned as uncollectible. Pauline V. and John H. Trigg, 31 IBLA 296 (1977), and cases cited therein. In those cases, we held that where a bank has properly dishonored a check which was tendered to BLM prior to the due date, timely payment has not been made. But where return of the check resulted from a confirmed bank error, subsequent collection and payment of the check related back to the time that the check was originally tendered to BLM, and payment was timely. Those cases involved situations where a check was returned for insufficient funds or the like.

We consider now for the first time whether subsequent collection and payment of a check, properly returned by a Federal Reserve bank because the check was drawn on a foreign bank, relates back to the check's original tender to BLM. We hold that BLM erred in attempting to deposit a check drawn on a foreign bank with FRB-Denver. The bank's proper return of the check should not, therefore, prejudice appellant's right to receive credit for having tendered the check, if the check is subsequently collected and paid through the appropriate procedures.

A brief look at some of the framework of Government financial operations explains this result.

[2] The Federal Reserve Act, 12 U.S.C. § 1 et seq. (1970), establishes a system of depositories for Government funds consisting of the Federal Reserve banks and certain member banks of the Federal Reserve system designated by the Secretary of the Treasury (designated Federal depositories). 12 U.S.C. §§ 265, 391, and 392 (1970); 31 CFR Part 202 (1976). These banks also serve as the fiscal agents of the Government. Id. Pursuant to these provisions, BLM has adopted procedures, which the State Office apparently relied on here, for sending fees for deposit to designated Federal depositories within hand-carry distance of BLM regional offices and otherwise by mail to FRB-Denver. BLM Manual 1372.34 (1976). Apparently, in the

present case, there is no designated Federal depository within hand-carrying distance of the State Office, and, thus, BLM mailed appellant's check to FRB-Denver.

FRB-Denver, however, like other branches of the Federal Reserve bank, will not clear checks drawn on foreign banks. As a result of this practice, the Treasury Department has created an alternative route for Government agencies to clear checks drawn on foreign banks through the Treasury's Division of Cash Services (Cash Division). <sup>3/</sup> The Treasury Fiscal Requirements Manual provides:

Section 6020 - DISPOSITION OF CHECKS DRAWN ON FOREIGN BANKS AND FOREIGN CURRENCIES BY AGENCIES WITHIN THE UNITED STATES

6020.10 - Where Deposits of Checks Should Be Made. All checks drawn on foreign banks and foreign branches of U.S. banks, whether payable in U.S. dollars or in a foreign currency, should be endorsed by the agency in the usual manner and transmitted for deposit to the Division of Cash Services, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20220, along with covering certificates of deposit.

6020.20 - Checks Drawn on Foreign Banks Payable in United States Dollars. Certificates of deposit accompanying these checks will be completed by the agency in the usual manner, including the insertion of the U.S. dollar amount. All such checks to be deposited should be included in a single certificate of deposit. The amount of the certificate of deposit will be credited in the Treasury's account upon receipt by the Division of Cash Services, Bureau of Government Financial Operations, and the confirmed copies of the certificate of deposit will be distributed in accordance with established procedures. A considerable period of time, frequently a number of weeks, is required to collect the proceeds of many checks

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<sup>3/</sup> Washington, D.C., area BLM offices may send deposits to the Cash Division regardless of the deposit's form. BLM Manual 1372.34 (1976).

of this type. Therefore, notwithstanding the fact that the entire amount of the certificate of deposit has been credited in the Treasury's account upon receipt, agencies should be aware that they may receive a TFS Form 5504 "Debit Voucher" in connection with uncollectible checks or collection charges on these items, some considerable period of time after the deposit was confirmed (ITFRM 5-6020.50).

6020.30 - Checks Drawn on Foreign Banks Payable in Foreign Currencies. Certificates of deposit accompanying these checks will be completed by the agency in the usual manner, except that the U.S. dollar amount will be left blank. A separate certificate of deposit should be prepared for each check drawn on a foreign bank. For reference purposes, agencies should inscribe on the front of the certificate of deposit, or on the back if space is lacking on the front: (1) the name of the bank on which the check is drawn; (2) the medium of exchange; (3) the foreign currency amount; and (4) the date of the check. The net dollar proceeds will be entered by the Division of Cash Services, Bureau of Government Financial Operations, when credit is received by that office and the confirmed certificate of deposit copies will be distributed under the established procedures.

Although the BLM Manual does not mention that foreign checks should be sent to the Cash Division, its section on uncollectible checks states: "Remittances deposited in a designated federal depository, Federal Reserve Bank, or the Cash Division of the United States Treasury, which are not paid upon presentation to the drawee, are returned to the Bureau by the Treasury Department as 'uncollectible.'" (Emphasis added.) BLM Manual 1372.28 (1976). Even though the Manual does not specifically provide that a foreign check must be collected through the Cash Division, the general definition of collectibility implies that the Cash Division should be utilized where appropriate to achieve collection, as it is where a foreign bank is involved. In other words, a check drawn on a foreign bank is not, per se,

"uncollectible" and thus not payment. Instead of rejecting this form of payment, the check should have been sent to the Cash Division rather than FRB-Denver to effect collection.

As the check was not submitted to the Cash Division, appellant's lease should not have been terminated for nonpayment. Appellant's check should be processed as provided by the Treasury Fiscal Requirements Manual and appellant held to have made timely payment contingent on the collection and payment of the check.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded.

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Martin Ritvo  
Administrative Judge

We concur.

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Frederick Fishman  
Administrative Judge

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Joseph W. Goss  
Administrative Judge



